

Federal Railroad Administration, DOT

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or deny the matter. If an objection is made, the reasons therefor shall be stated.

(d) Any matter admitted under this section is conclusively established unless the presiding official permits withdrawal or amendment of the admission for good cause shown.

(e) Upon motion, the presiding officer may order any party to respond to a request for admission.

[54 FR 42906, Oct. 18, 1989]

§ 209.7 Subpoenas; witness fees.

(a) The Chief Counsel may issue a subpoena on his or her own initiative in any matter related to enforcement of the railroad safety laws. However, where a proceeding under subpart B, C, or D of this part has been initiated, only the presiding officer may issue subpoenas, and only upon the written request of any party to the proceeding who makes an adequate showing that the information sought will materially advance the proceeding.

(b) A subpoena may require attendance of a witness at a deposition or hearing or the production of documentary or other tangible evidence in the possession or control of the person served, or both.

(c) A subpoena may be served personally by any person who is not an interested person and is not less than eighteen (18) years of age, or by certified or registered mail.

(d) Service of a subpoena shall be made by delivering a copy of the subpoena in the appropriate manner, as set forth below. Service of a subpoena requiring attendance of a person is not complete unless delivery is accompanied by tender of fees for one day's attendance and mileage as specified by paragraph (f) of this section. However, when a subpoena is issued upon the request of any officer or agency of the United States, fees and mileage need not be tendered at the time of service but will be paid by FRA at the place and time specified in the subpoena for attendance.

Delivery of a copy of the subpoena may be made:

- (1) To a natural person by:
 - (i) Handing it to the person;

- (ii) Leaving it at his or her office with the person in charge thereof;

- (iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;

- (iv) Mailing it by registered or certified mail to him or her at his or her last known address; or

- (v) Any method whereby actual notice of the issuance and content is given (and the fees are made available) prior to the return date.

- (2) To an entity other than a natural person by:

- (i) Handing a copy of the subpoena to a registered agent for service or to any officer, director, or agent in charge of any office of the person;

- (ii) Mailing it by registered or certified mail to any representative listed in paragraph (d)(2)(i) of this section at his or her last known address; or

- (iii) Any method whereby actual notice is given to such representative (and the fees are made available) prior to the return date.

- (e) The original subpoena bearing a certificate of service shall be filed in accordance with § 209.9.

- (f) A witness subpoenaed by the FRA shall be entitled to the same fees and mileage as would be paid to a witness in a proceeding in the district courts of the United States. See 28 U.S.C. 1821. The witness fees and mileage shall be paid by the person requesting that the subpoena be issued. In an appropriate case, the Chief Counsel or the hearing officer may direct the person requesting issuance of a subpoena for the production of documentary or other tangible evidence to reimburse the responding person for actual costs of producing and/or transporting such evidence.

- (g) Notwithstanding the provisions of paragraph (f) of this section, and upon request, witness fees and mileage or the costs of producing other evidence may be paid by the FRA if the official who issued the subpoena determines on the basis of good cause shown that:

- (1) The presence of the subpoenaed witness or evidence will materially advance the proceedings; and

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(2) The party at whose instance the subpoena was issued would suffer a serious financial hardship if required to pay the witness fees and mileage.

(h) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than ten (10) days after the date of service of such subpoena, apply in writing to the official who issued the subpoena, or if that person is unavailable, to the Chief Counsel, to quash or modify the subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The issuing official or the Chief Counsel, as the case may be, may:

(1) Deny the application;

(2) Quash or modify the subpoena; or

(3) In the case of subpoena to produce documentary or other tangible evidence, condition denial of the application upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the evidence.

(i) If there is a refusal to obey a subpoena served upon any person under the provisions of this section, the FRA may request the Attorney General to seek the aid of the United States District Court for any district in which the person is found to compel that person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the FRA, or both.

(j) Attendance of any FRA employee engaged in an investigation which gave rise to a proceeding under subpart B or C of this part for the purpose of eliciting factual testimony may be assured by filing a request with the Chief Counsel at least fifteen (15) days before the date of the hearing. The request must indicate the present intent of the requesting person to call the employee as a witness and state generally why the witness will be required.

[42 FR 56742, Oct. 28, 1977, as amended at 54 FR 42906, Oct. 18, 1989]

§ 209.8 Depositions in formal proceedings.

(a) Any party to a proceeding under subpart B, C, or D of this part may take the testimony of any person, including a party, by deposition upon

oral examination on order of the presiding officer following the granting of a motion under paragraph (b) of this section. Depositions may be taken before any disinterested person who is authorized by law to administer oaths. The attendance of witnesses may be compelled by subpoena as provided in § 209.7 and, for proceedings under subpart D of this part, § 209.315.

(b) Any party desiring to take the deposition of a witness shall file and serve a written motion setting forth the name of the witness; the date, time, and place of the deposition; the subject matter of the witness' expected testimony; whether any party objects to the taking of the deposition; and the reasons for taking such deposition. Such motion shall be granted only upon a showing of good cause. Good cause exists to take a person's deposition when the information sought is relevant to the subject matter involved in the proceeding and:

(1) The information is not obtainable from some other source that is more convenient, less burdensome, and less expensive; or

(2) The request is not unreasonably cumulative, unduly burdensome, or unduly expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues in the case.

(c) Such notice as the presiding officer shall order will be given for the taking of a deposition, but this shall not be less than 10 days' written notice unless the parties agree to a shorter period.

(d) Each witness testifying upon deposition shall be sworn and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, subscribed by the witness, and certified by the reporter.

(e) Depositions taken under this section may be used for discovery, to contradict or impeach the testimony of the deponent as a witness, or as evidence in the proceeding as permitted by paragraph (f) of this section and in accordance with the limitations of Fed. R. Civ. Pro. 32 as though it were applicable to these proceedings.